

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re: New York City Policing During Summer 2020
Demonstrations.

Case No. 1:20-cv-10291

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Web Conference

December 16, 2021
10:06 A.M.

DEPOSITION OF SERGEANT STEVEN LACKOS,
taken by the attorneys for Plaintiffs, pursuant to
Order, held via web conference before Andrea
Bloecker, a Notary Public within and for the State
of New York, on the above date and time.

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2 A P P E A R A N C E S :

3 THE LAW OFFICE OF MICHAEL L. SPIEGEL
4 Attorney for Plaintiff Sierra
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6 New York, New York 10005

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BY: MICHAEL L. SPIEGEL, ESQ.

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7

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Attorney for Plaintiff People of the
State of New York
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11 BY: LILLIAN MARQUEZ, ESQ.

12

13 COHEN & GREEN, PLLC
14 Attorneys for Plaintiffs Sow
15 1639 Centre Street, Suite 216
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15

BY: REMY GREEN, ESQ.

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GEORGIA M. PESTANA, ESQ.
Corporation Counsel
Attorney for Defendants --
City of New York, et al
100 Church Street
New York, New York 10007

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21 BY: DANIEL BRAUN, ESQ.

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23 ALSO PRESENT:

24 WYLIE STECKLOW, ESQ.

25 JENNVINE WONG, ESQ.

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that the sealing and filing of the within deposition be waived.

IT IS FURTHER STIPULATED AND AGREED that such deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the officer before whom said deposition is taken.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to from, are reserved to the time of trial.

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2 THE REPORTER: It is hereby
3 stipulated and agreed by and between
4 counsel for all parties present that this
5 deposition is being conducted remotely by
6 video conference, and that the court
7 reporter, witness and all counsel are in
8 separate remote locations and
9 participating via Zoom or any web
10 conference meeting platform under the
11 control of Bee Reporting Agency, Inc.

12 It is further stipulated that this
13 videoconference will not be recorded in
14 any manner and that any recording without
15 the express written consent of all
16 parties shall be considered unauthorized,
17 in violation of law and shall not be used
18 for any purpose in this litigation or
19 otherwise.

20 Before I swear in the witness, I
21 will ask each counsel to stipulate on the
22 record that I, the court reporter, may
23 swear in the witness even though I am not
24 physically in the presence of the witness
25 and that there is no objection to that at

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this time, nor will there be an objection
at a future date.

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MR. SPIEGEL: So stipulated.

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MR. BRAUN: Agreed.

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THE REPORTER: Mr. Braun, can you
represent that to the best of your
knowledge and belief the witness
appearing today via web conference is in
fact Sergeant Steven Lackos?

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MR. BRAUN: Yes.

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THE REPORTER: Mr. Braun, will you
be ordering a copy of the transcript?

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MR. BRAUN: I want to request a
copy of the transcript pursuant to Rule
30(f).

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MR. SPIEGEL: Remy, did you want to
make a statement now before we start?

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MX. GREEN: Yes. Thank you.

I appear to be getting a little
echo. Let me know if that gets bad.

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In an August 19, 2021 conference in
front of the judge, the court ordered --
and I'm quoting here from page 16 of the
transcript -- Okay, so that's the ruling

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then. You have to provide it two days

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ahead of the deposition, and I'm very

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hopeful that's what's going to happen,

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and if not, I'm sure I'm going to hear

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about it. That's the end of the quote.

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It in that context was referring to

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the documents that are required before a

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deposition under a separate court

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reporter. Mike sent a reminder to

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Corporation Counsel on Tuesday because we

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had not received any documents 48 hours

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in advance or two business days in

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advance, as the court has ordered and as

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the Corporation Counsel as failed to do

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repeatedly in this case.

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Even then, later that day, we got

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some documents, but it wasn't until

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yesterday morning that we got 33 videos

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comprising -- this is a rough estimate --

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at least five hours of video. That's

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unreasonable. It violates a court order

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and it's not okay.

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Beyond that, by agreement of the

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party and by Court Order, Corporation

2 Counsel is supposed to be sending a list
3 of protests that officers attended that
4 is generated by asking them about what
5 protests they remember but also by
6 reviewing their activity logs.

7 Sergeant Lackos' activity logs make
8 very clear that he was at certain
9 protests and they were not included in
10 the cover letter or list of protests that
11 Corporation Counsel sent. Instead, there
12 is no list that Corporation Counsel sent.

13 Corporation counsel has repeatedly
14 and in multiple ways violated Court
15 Orders relative to this deposition and so
16 we are reserving the right to call
17 Sergeant Lackos back.

18 Sergeant Lackos, I'm sorry about
19 that. If your counsel had followed court
20 orders, that wouldn't be happening.

21 MR. BRAUN: Please note my
22 objection for the record.

23 MX. GREEN: What objection is it?
24 Are you saying that you did not violate
25 court orders?

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MR. BRAUN: Again, please note my
objection for the record.

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MX. GREEN: So you're unwilling to
say you didn't violate court orders?

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MR. BRAUN: Again I note my
objection for the record. I believe that
much of what was stated there was not
accurate.

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MX. GREEN: What parts?

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MR. BRAUN: Mx. Green, I would like
to move on. I just note my objection for
the record, please.

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MX. GREEN: Okay.

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I will note that Mr. Braun was not
able to identify a single thing that was
inaccurate.

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Let's move on.

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MR. BRAUN: I object to that as
well.

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MX. GREEN: Okay.

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What was inaccurate?

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MR. BRAUN: Well, you said a lot
there. Amongst other things, my
understanding of what was sent to you in

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terms of the sergeant's recollection

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about the specific dates that he was at

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is not entirely accurate and we object as

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well to you trying to keep this

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deposition open.

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MX. GREEN: Okay.

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Did you follow the court order to

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disclose things two business days ahead

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of time?

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MR. BRAUN: Again note my objection

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for the record and let's please move

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on.

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MX. GREEN: Okay.

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Again I will note that you still

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have not identified a single specific

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thing that was inaccurate and you have

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not even remotely suggested that the

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Corporation Counsel has complied with the

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courts orders.

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MR. BRAUN: I object to your

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characterization of what I said but I've

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noted my objection for the record.

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2 alarm. You said earlier that sometimes you could
3 arrest with probable cause just for public annoyance
4 and alarm and so I'm asking you what your
5 understanding of that crime is.

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MR. BRAUN: Objection.

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A I'm relating it to disorderly conduct.

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Q Is it your understanding that there's no
9 difference between public annoyance and alarm and
10 disorderly conduct?

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A That -- that could be part of disorderly
12 conduct I'm saying. There's a couple things under
13 disorderly conduct that you could be arrested for,
14 blocking vehicle traffic is one, causing public
15 annoyance and alarm is part of it, reasonable
16 noise.

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MX. GREEN: Let's pause here
18 because I think we have the judge on the
19 line.

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MR. STECKLOW: The judge is calling
21 in now and asked that you take everything
22 down on the record.

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JUDGE GORENSTEIN: Hello, it's
24 Judge Gorenstein.

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MX. GREEN: Good afternoon, Judge.

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You have Remy Green and Wylie Stecklow
for the plaintiffs here and Daniel Braun
for defendants.

MR. BRAUN: Good afternoon, Your
Honor.

JUDGE GORENSTEIN: What's the
application?

MX. GREEN: Let me summarize it
very quickly.

Defendants produced yesterday
morning about six hours of footage
consisting of 33 videos and the day
before at the end of the day produced 110
pages of memo book, along with a letter
saying that the witness here today could
not remember any Schedule A protest
that he was at.

At the August 19 conference, the
court ruled on your application to get
these kind of things in advance of
depositions. I'm quoting from the
transcript here, That's the ruling then.
You have to provide it two days ahead of
deposition, and I'm very hopeful that's

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what's going to happen, and if not, I'm
sure I'm going to hear about it.

Across the balance of depositions,
I think the majority we have not been
getting it 48 hours in advance but
typically it hasn't been a massive dump
of video or massive dump of body-worn
camera. However, in two of the last few
depositions, we've been getting multiple
hours within 24 hours of a deposition of
footage and massive document dumps also
under 48 hours before a deposition.

It makes it extraordinarily
difficult to, you know, at a minimum
schedule who needs to be there. So I was
not planning to be at this deposition and
only found out that the witness had been
at a number of the protests that are
important to us yesterday, and the reason
I only found out yesterday was because
the list of protests they put together
just said he didn't remember any of the
Schedule A protests, even though his memo
book, which we got after that, showed a

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number, and then based on the video
footage that we saw yesterday, there were
others that even the memo book didn't let
us know about.

What's happening is that the City
is objecting to us keeping the deposition
open or calling the witness back so that
we actually have the proper opportunity
to prepare to question on this. I
believe Mr. Stecklow can give a little
more detail --

JUDGE GORENSTEIN: Can I cut to the
chase on this.

MX. GREEN: Yes.

JUDGE GORENSTEIN: It doesn't sound
like my ruling is going to make any
difference for today, right? You're
going to do whatever you do today and
then you can make an application to bring
the witness back and they'll have their
response. I don't understand why we're
doing this now.

MX. GREEN: I think part of it is
whether we spend four hours going through

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video footage in a way that is not prepared as opposed to calling it for the day and coming back when we are adequately prepared.

JUDGE GORENSTEIN: I see. All right. Okay.

Did you finish or is there more?

MR. STECKLOW: Yes, Judge, This is Wylie Stecklow. I think I had a little more to add just about specifics.

As Mx. Green had said, this is the second time in recent weeks this has occurred. The other time this was with the Stevens deposition. On both dates, it seemed like the body-worn camera that was produced within really just only one business day of the deposition had been organized and in the City's hands a month or two before or a few weeks before.

As an example, in the current deposition of Officer Lackos, on the Axon summary doc it shows that it was generated October 14, 2021 but was not turned over until 8:50 A.M. yesterday.

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As for Officer Stevens, it showed that it was generated on November 29, 2021 but it was not turned over until that Friday, December 3, at 6 P.M., when the deposition was for that following Monday.

So it just seems over and over this has now happened a bunch of times, we've gotten way too much documentation and body-worn camera video too close in time. We've handled it up until now but because both Officers Stevens and Lackos have a tremendous amount of body-worn camera video and dates that they were at protestors it was next to impossible to prepare properly for their depositions.

So I made the same objection on the record during Officer Stevens' deposition and that's why we're asking the court now for a ruling, so we know where we stand.

JUDGE GORENSTEIN: I'll hear from the City.

MR. BRAUN: Thank you, Your Honor.

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Let me just begin by saying I can only speak to today's deposition. I have not had any personal involvement with any of the other depositions.

In terms of today's deposition, I am told by my colleagues who were tasked with producing the documents specific to today's deposition that the materials were produced earlier as well. I understand from Mx. Green's representation that they claimed that they did not get those documents, but in counsel's discussions on the record earlier in the deposition, Mx. Green had said that they reviewed all the footage that was produced specific to today's deposition.

So, although the City objected to keeping the deposition open, the City also is in the position that it's not really necessary to be calling the court because from our perspective this may not be a ripe issue. We're about four and a half hours into the record. The sergeant

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is here. Counsel for plaintiff has stated that they reviewed all the footage and so the sergeant is here ready to testify.

The sergeant's recollection, whatever that may be, has no bearing on Mx. Green's review of the footage, which Mx. Green said they had already reviewed.

The City also expressed on the record to Mx. Green that insofar as we maintain our objection but there are many questions that are not covered in today's deposition that Mx. Green had sought to ask based on materials that Mx. Green reviewed that were specifically produced with respect to today's deposition, then Mx. Green can raise it with the City at that point.

So the City thought that this was somewhat of a --

JUDGE GORENSTEIN: I'm on criminal duty so you have to hold on for a second. I have to do this.

MR. BRAUN: Sure.

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JUDGE GORENSTEIN: Anything else
from the City?

MR. BRAUN: No. Just that the City
was of the view that if this becomes a
live issue in this deposition then the
parties could address the City's
objection at that point and see if they
could work it out before taking up the
court's time.

JUDGE GORENSTEIN: Okay.

Here's my ruling. You have to
follow the 48 hour rule, and if you don't
then -- I'm talking to the City, you're
going to put yourself in this
predicament.

I'm not going to sit and judge
whether they should have done this with
whatever they got yesterday or last
night.

You have to follow the 48 hour
rule. If what that means you have to
postpone a deposition, then you'll
postpone it, and then it may create more
problems and different kinds of problems

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but they'll be problems of the City's making if they don't do it 48 hours in advance.

MR. BRAUN: Just to be clear, Your Honor, plaintiff didn't request -- I just want to specify for the record that plaintiff did not request that today's deposition be postponed.

JUDGE GORENSTEIN: Okay.

Well, then that does in itself create a little bit of an equity issue in terms of if they thought they couldn't do it I don't understand why they didn't seek that. Maybe I should get an answer to that question.

If you didn't have enough time to prepare, why didn't you seek to postpone.

MR. STECKLOW: Judge, I'm sorry, having been to so many depositions, there are eight different cases consolidated here. Each of them have different dates of incident that they're concerned about. So the fact that one of the eight may be

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able to go forward because they have a very narrow focus, doesn't mean that the Sow litigation, which has a much broader focus, doesn't mean it would also be able to go forward.

If the court believes that one of the eight combined litigations needs to adjourn that means we should adjourn the deposition for anybody, we could go forward with that understanding.

Also, Judge, I just want to clarify in your prior ruling it was 48 hours, a/k/a two business days, and I want to make sure that's the same ruling.

JUDGE GORENSTEIN: Yes, two business days.

MR. STECKLOW: Thank you, Your Honor.

JUDGE GORENSTEIN: I mean I don't understand why the City puts us in this position. It seems crazy to me.

Is there some explanation for why you couldn't follow my order?

MR. BRAUN: Your honor, I was not

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personally tasked with producing those documents, so I'm afraid I'm not personally able to address that.

JUDGE GORENSTEIN: All right.

MR. BRAUN: I'm just here attending the deposition.

JUDGE GORENSTEIN: That's fine. I'm not going to blame plaintiffs for not seeking to postpone.

Going forward, you have to do it two business days in advance. If you don't, then -- I mean I don't know what to tell you. I don't know how to solve the problem or sanction you or whatever but it's your responsibility, and, frankly, I'm a little bit outraged that you couldn't do this very basic thing, and if you can't do it, then you need to -- if there's something that makes it impossible in a particular case, then you need to immediately reach out to the plaintiffs' attorneys and not act like well, we'll just go forward and, you know it's their problem. It's the

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City's problem.

So if you don't do it two days in advance you have to reach out to the attorneys and see if they want to go forward or not, and if they don't, then you're going to have to postpone it.

So for today, yes, bring the witness back if that's what the plaintiffs think they need.

Anything else you need from me?

MX. GREEN: No. Thank you, Judge.

JUDGE GORENSTEIN: Anything from the defendant?

MR. BRAUN: Not at this time, Your Honor.

JUDGE GORENSTEIN: Okay.

Thank you, everyone. Good bye.

MR. STECKLOW: Thank you, Your Honor.

Off the record.

(Whereupon, a discussion was held off the record.)

(Whereupon, Mr. Stecklow left the